PETITION.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. ————. Original.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the State of Louisiana, herein represented by her Governor, Luther E. Hall, and her Attorney-General, Ruffin G. Pleasant, respectfully represents:

1. That petitioner is one of the sovereign States of the American Union, and possesses the right and the authority to bring this suit and stand in judgment in Your Honorable Court.

2. That, as a part of her system of enforcing her criminal laws and as a means of maintaining those persons who are convicted of crimes and sentenced to a term of service in her penitentiary, your petitioner operates three (3) sugar plantations and three (3) sugar factories in said State,

and employs in said operation a large number of said convicts.

3. That said use of convict labor as part of the State's penal system relieves the people generally of the State of the payment of a large amount of taxes which otherwise would be imposed upon them each year for the maintenance of said convicts.

4. That the yield of sugar from said plantations and factories for the year 1913-1914 has been not less than six million (6,000,000) pounds; and that of said amount of sugar petitioner has on hand and unsold one million five hundred thousand (1,500,000) pounds of the value of at least thirty seven thousand five hundred dollars ($37,500).

5. That the Honorable William Gibbs McAdoo, Secretary of the Treasury of the United States, and a citizen of the State of New York, and the Honorable Charles Sumner Hamlin, Assistant Secretary of the Treasury of the United States, and a citizen of the State of Massachusetts, and certain of their agents and subordinates, are charged by the laws of the general government with the duty of collecting customs duties upon all sugars imported into the United States from foreign countries.

6. That, over the protest, and to the great injury, of your petitioner, the said Treasury officials are permitting, without authority of law, sugar, testing by the polariscope ninety-six degrees, and produced in the Republic of Cuba, to be imported into the United States of America upon the payment of one and one-hundredth cents (1.01c.) duty per pound, or eighty (80%) per centum of seventy-five (75%) per centum of the rate of duty imposed by the Act of Congress, entitled "An Act to provide revenue for the Government and to encourage the industries of the United States," approved July the twenty-fourth, one thousand eight hundred and ninety-seven, commonly known as the Dingley

Bill, and hereinafter referred to as such; and that, by such illegal, unauthorized, and arbitrary acts on the part of said Treasury officials, they have caused the reduction of the price of the said sugar, still held by your petitioner, to the extent of at least one quarter (1/4c.) of one cent per pound, or three thousand seven hundred and fifty dollars ($3,750), and will cause your petitioner to lose said amount by reason of said reduction, unless they are enjoined and restrained as herein prayed for.

7. Your petitioner avers that the rate of duty which should be charged and collected by said Treasury officials on all such sugar imported into this country from foreign nations, except the Republic of Cuba, should be the rate imposed by the said Dingley Bill, or one and six hundred eighty-five thousandths (1.685c) cents per pound and that said Cuban sugar should be given a preferential of twenty (20) per centum reduction on said rate, or should be charged one and three hundred forty-eight thousandths (1.348c) cents duty per pound, as provided in the commercial convention between the United States and said Republic of Cuba of December eleventh, nineteen hundred and two, and by the Act of Congress of December seventeenth, nineteen hundred and three, carrying into effect said convention; or, in the alternative, that the duty on all such sugar imported into the United States should be seventy-five per centum (75%) of the Dingley Bill rate, or one and twenty-six hundredths (1.26c.) cents per pound, as provided in the Act of Congress entitled "An Act to reduce tariff duties and to provide revenue for the government and for other purposes," approved October third, nineteen hundred and thirteen, commonly known as the Underwood Bill, without any preferential rate whatever being allowed in favor of said Cuban sugar.

8. Your petitioner avers that the said acts of said Treasury officials and their subordinates are arbitrary, illegal and

unjust, and are causing, and will work, great and irreparable injury to your petitioner unless they are restrained and inhibited from demanding and collecting the said illegal charges on said Cuban sugar imported into the United States; and another, and higher, duty, as shown above, be exacted and collected by said officials on said sugar instead. Your petitioner further avers that she has no adequate remedy at law or other relief than that herein prayed for.

9. Your petitioner further avers that the duties of said Treasury officials, as aforesaid, are ministerial, that they refuse to carry out the law as shown herein, that they should be perpetually enjoined and restrained from imposing, exacting, and collecting the said illegal and pretended duty on said sugar imported from Cuba into the United States, and that they should be ordered to demand and collect another rate of duty thereon as hereinabove shown.

Wherefore, your petitioner prays that the Honorable William Gibbs McAdoo, Secretary of the Treasury of the United States, and the Honorable Charles Sumner Hamlin, Assistant Secretary of the Treasury of the United States, be cited to appear and answer hereto on a day certain; that copies of this petition be duly served upon each of them, and that, after hearing, and in due course, there be judgment herein perpetually enjoining, restraining, and inhibiting the said defendants, their agents and subordinates, from demanding, exacting and collecting on sugar testing ninety-six (96) degrees by the polariscope produced in the Republic of Cuba and imported into the United States of America a tariff of only eighty (80) per centum of seventy-five (75) per centum of the rates imposed by the aforesaid Act of Congress, approved July twenty-fourth, eighteen hundred and ninety-seven, and that writs of injunction issue to said effect.

Your petitioner further prays that a provisonal or pre-

liminary restraining order be issued to the same purport and effect as above prayed for against said respective defendants to remain in full force and effect until the further order of this Court, or until this suit shall be finally concluded.

Your petitioner further prays that the said defendants, their agents and subordinates be ordered to charge and collect on all such sugar as hereinabove described, and that shall be imported into the United States from Cuba, one and thirty-four hundredths cents (1.34c) duty per pound; or, in the alternative, should the Court be of the opinion that the said rate is incorrect, petitioner prays that said defendants, their agents and subordinates, be ordered to charge and collect on said sugar one and twenty-six hundredths (1.26c.) cents duty per pound.

And your petitioner prays for such other and further relief as the nature of the case requires, and to equity belongs; and plaintiff will ever pray.

Ruffin G. Pleasant.,
Attorney-General of the State of Louisiana.

J. W. Bailey.....,
Paul J. Christian
Of Counsel.

Personally appeared before me, the undersigned authority, Ruffin G. Pleasant, who, upon being duly sworn, says that he is the Attorney-General of the State of Louisiana, and duly authorized to appear and represent said State herein, and that the allegations of fact in the above bill of complaint are true, and that the allegations of law contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me at the City of Washington, District of Columbia, on this the day of March, A. D. 1914.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE STATE OF LOUISIANA
v.
WILLIAM GIBBS MCADOO, Secretary of the Treasury of the United States, et al. } No. ——, Original.

ON MOTION FOR LEAVE TO FILE PETITION.

BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE MOTION.

It is a significant fact that no such suit as this has been brought since the foundation of the Government. As said in *Mississippi* v. *Johnson*, 4 Wall. 475, 500:

> It was admitted in the argument that the application now made to us is without a precedent; and this is of much weight against it.

The court was similarly impressed in *Degge* v. *Hitchcock*, 229 U. S. 162, 169.

Reasons for this lack of precedent in the present instance are quite apparent,

I.

This court is without jurisdiction in the premises.

1. The suit is one against the United States, brought without its consent.

Says Justice Miller in *Cunningham* v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446, 451:

> It may be accepted as a point of departure unquestioned, that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution.

See also—

United States v. *Lee*, 106 U. S. 196, 207.
Hans v. *Louisiana*, 134 U. S. 1.
Minnesota v. *Hitchcock*, 185 U. S. 373, 387.
Oregon v. *Hitchcock*, 202 U. S. 60.
Kansas v. *United States*, 204 U. S. 331.

It is also true that whether a suit is one against a State is to be determined not by the fact of the party named as defendant on the record, but by the result of the judgment or decree which may be entered. The same rule applies to the United States.

Minnesota v. *Hitchcock*, *supra*; p. 387.
Kansas v. *United States*, *supra*, p. 341.

In *Cunningham* v. *Macon & Brunswick R. R. Co.*, *supra* (p. 451), the court undertakes, in the following

language, a classification of those cases which are not forbidden by the rule in question:

> 1. It has been held in a class of cases where property of the State, or property in which the State has an interest, comes before the court and under its control, in the regular course of judicial administration, without being forcibly taken from the possession of the government, the court will proceed to discharge its duty in regard to that property. And the State, if it choose to come in as plaintiff, as in prize cases, or to intervene in other cases when she may have a lien or other claim on the property, will be permitted to do so, but subject to the rule that her rights will receive the same consideration as any other party interested in the matter, and be subjected in like manner to the judgment of the court. * * *
>
> 2. Another class of cases is where an individual is sued in tort for some act injurious to another in regard to person or property, to which his defense is that he has acted under the orders of the government.
>
> In these cases he is not sued as, or because he is, the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he asserts authority as such officer. To make out his defense he must show that his authority was sufficient in law to protect him. * * *
>
> 3. A third class, which has given rise to more controversy, is where the law has imposed upon an officer of the government a

> well defined duty in regard to a specific matter, not affecting the general powers or functions of the government, but in the performance of which one or more individuals have a distinct interest capable of enforcement by judicial process.

This suit does not fall within any of the enumerated classes. It is brought against the defendants, McAdoo and Hamlin, solely in their official capacities. It is not pretended that they have any personal interest to be served by their action or inaction. The resignation of either would remove him from the purview of the suit (*Warner Co.* v. *Smith*, 165 U. S. 28). They are not sued for any tort or trespass committed against the State of Louisiana which they seek to justify by pleading governmental authority (as in *United States* v. *Lee*, 106 U. S. 196); they do not detain or seek to dispose of any property claimed by her (as in *Osborn* v. *Bank*, 9 Wheat. 738; *Davis* v. *Gray*, 16 Wall. 203); they are not being called upon for the performance of some well-defined duty in regard to a specific matter not affecting the general powers or functions of the Government (as in *Marbury* v. *Madison*, 1 Cranch, 137); nor, as we shall later contend, has the State of Louisiana "a distinct interest capable of enforcement by judicial process."

The judgment or decree when entered will primarily affect the revenues of the United States and only indirectly and consequentially the interests of the petitioner. It is immaterial that the relief sought would increase the revenues instead of dimin-

ishing them; for if the State of Louisiana as a producer of sugar by her convict labor can bring this suit on the ground that the rate which is being enforced is too low, the State of Maryland, for instance, as a consumer of sugar in her penal institutions, would seem to have an equal right, if the Secretary of the Treasury had construed the law as the petitioner desires, to bring her suit on the ground that the rate of duty being enforced was too high. One suit would tend to swell the revenues, the other to diminish them. Both alike would affect the general powers and functions of the Government.

In essence, this is a suit to compel the defendants to collect a tax authorized by former law, but contrary to the purport of subsequent legislation, which is alleged, however, to have been ineffective to repeal the earlier act. Such a suit is one against the United States itself.

New York Guaranty Co. v. *Steele*, 134 U. S. 230.

Louisiana v. *Jummel*, 107 U. S. 711.

North Carolina v. *Temple*, 134 U. S. 22.

In re Ayers, 123 U. S. 443.

Hopkins v. *Clemson College*, 221 U. S. 636, 642.

2. The State of Louisiana has no legal interest in the subject matter.

The mere fact that a State is the party plaintiff is no conclusive test of jurisdiction. Like every other litigant, she must present a justiciable controversy. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 287.

Nor will a writ of mandamus or mandatory injunction issue to protect a remote or fanciful interest. *Board of Liquidation* v. *McComb*, 92 U. S. 531, 536.

The State of Louisiana sues, not as an importer, called upon to pay the tax, but merely as a domestic producer the market value of whose commodity may be lowered as the result of Cuban competition. Even an importer could not sue in this instance, for by the terms of the existing law (act of October 3, 1913, 38 Stat. 114, ch. 16, section III, par. N), his right to complain is limited to the collection of a rate of duty *higher* than the law provides. If an importer, even after paying the tax under protest, could not complain that the duty was too low, *a fortiori* the petitioner can not. If the petitioner can sue, so also, in the proper forum, can every other domestic producer, every merchant with a stock of sugar in his warehouse, and every consumer as well when a converse construction of the law threatens him with a higher price. The remote and consequential character of the petitioner's alleged injury is emphasized, moreover, when we reflect that it is purely speculative; for a crop failure, a decrease in production, an increased demand, or similar causes, might, in spite of the lower duty, prevent a fall in the market value of the stock in hand.

If suits of this sort can be tolerated, the way is opened for testing every important act of Congress by persons with no other cause of action than the fear of an injurious effect upon their business.

3. The duty of the defendants in the premises is not ministerial; it is political, and requires the exercise of executive discretion.

The Secretary of the Treasury is required by law to "direct the superintendence of the collection of the duties on imports and tonnage, *as he shall judge best.*" Act of May 8, 1792, 1 Stat. 279, 280, ch. 37, sec. 6, now R. S. 249.

All officers of the customs are required to execute his instructions and "in case any difficulty shall arise as to the true construction or meaning of any part of the revenue laws, the *decision of the Secretary of the Treasury shall be conclusive* and binding upon all officers of the customs." Act of August 30, 1842, 5 Stat. 548, 566, ch. 270, sec. 24, now R. S. 2652.

Moreover, "no ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, or a judicial decision of a circuit or district court of the United States conflicting with such ruling or decision, and from which the Attorney General shall certify that no appeal or writ of error will be taken by the United States: *Provided*, That the Secretary of the Treasury may *in his discretion* decline to acquiesce in the judgment, decision or ruling of an inferior court upon any question affecting the interests of the United States, when, in his opinion, such interests require a final adjudication of such question

by the court of last resort." Act of March 3, 1875, 18 Stat. 469, ch. 136, sec. 2.

Thus the duty of the Secretary of the Treasury to construe the law, and of course to exercise his discretion in so doing, is not left to mere inference, but is set forth in express terms.

The quasi-judicial character of his functions further appears when we consider the remedies which have been provided by law to correct errors in the collection of customs duties.

It is a fundamental principle of our tariff system that the rate or amount of duty on each importation is to be fixed in the first instance by the collector of customs (sec. 5, act of July 31, 1789, 1 Stat. 29, 36; sec. 13, act of June 10, 1890, 26 Stat. 131, 136; sec. III, par. N, act of October 3, 1913, 38 Stat. 114, 187), subject, however, to the supervisory power of the Secretary of the Treasury under the act of May 8, 1792, sec. 6, R. S. 249, *supra*.

Originally there was no express provision of law for an appeal from the collector's decision as to the rate of duty, but it was held that if the collector fixed too high a rate of duty the importer, on paying the duty under protest, had his common-law action to recover from the collector. *Elliott* v. *Swartwout*, 10 Pet. 137.

As the collectors retained in their own hands the monies necessary to answer such claims, to the great embarrassment of the Government—as was demonstrated by Swartwout's defalcations—the act of March 3, 1839, 5 Stat. 339, 348, ch. 82, sec. 2, required

the collectors to pay such monies into the Treasury, and provided that the Secretary of the Treasury, whenever he ascertained that more money had been paid the collector than the law required, should draw a warrant for a refund of the overpayment.

In *Cary* v. *Curtis*, 3 How. 236, it was held that this statute abolished the common-law right to sue for the excess payment of duties, leaving the importer only his appeal to the Secretary of the Treasury, and as the result of this decision Congress immediately passed the act of February 26, 1845, 5 Stat. 727, ch. 22, giving a statutory right to sue for such excess duties.

By the act of June 30, 1864, 13 Stat. 202, 214, ch. 171, sec. 14—subsequently section 2931 R. S.—the decision of the collector of customs was made final and conclusive as to all persons interested therein, unless the owner, etc., should within ten days give notice in writing setting forth specifically the grounds of his objection, and should within thirty days appeal to the Secretary of the Treasury; the decision of the Secretary to be final unless suit was brought within ninety days after said decision. This statute took away again the common-law right of action and substituted therefor a statutory right, which was exclusive. In addition, the act of March 2, 1867, 14 Stat. 471, 475, ch. 169, sec. 10—now section 3224 R. S.—provided that no suit for the purpose of restraining the assessment or collection of any tax should be maintained in any court.

37574—14—2

So the law stood until the act of June 10, 1890, 26 Stat. 131, 137, ch. 407, which removed the appellate jurisdiction from the Secretary and placed it with the newly created Board of General Appraisers. The tariff act of August 5, 1909, 36 Stat. 11, pt. 1, ch. 6, created a Court of Customs Appeals and provided that appeals should go from the Board of General Appraisers directly to it and its decisions should be final. There was grave question whether under the act of 1890 as amended by the act of 1909 an importer might complain of a decision of the collector fixing a lower rate of duty than the law required. The matter was set at rest in favor of the right of appeal under such circumstances in the case of the *United States* v. *Schwartz*, 3 Court of Customs Appeals, 24, but Congress in the act of October 3, 1913 (Section III, par. N), made clear its disapproval of this construction of the law and confined the appeal to a decision "imposing a higher rate of duty, or a greater charge, fee, or exaction." From 1789 to 1890 there is no record of any attempt to review the decision of a collector or of the Secretary where the rate of duty imposed was alleged to be too low, and no such right exists at this time.

In other words, Congress in imposing duties upon the collectors of customs provided for a review of their decisions in all cases where money would be taken from the importer against the latter's will. In other cases, however, and particularly where the importer is called upon to pay less than his lawful

duty, the Government has left the decision of such questions entirely to the collectors, subject to the direction of the Secretary. It is content to rely upon the executive discretion of its officers.

Such are the duties imposed upon the defendants and their subordinates in the construction and execution of the customs laws in respect to the rates of duty to be imposed on imported merchandise, and such are the functions which the petitioner asks this court to control by injunction.

The language of the court in *Decatur* v. *Paulding*, 14 Pet. 497, 515, is pertinent to the present case:

> * * * In general, such duties [official duties of the head of one of the executive departments], whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel; and it would be difficult to imagine why a legal adviser was provided by law for the heads of departments, as well as for the President, unless their duties were regarded as executive in which judgment and discretion were to be exercised.

See also—

Marbury v. *Madison*, 1 Cranch 137.
Mississippi v. *Johnson*, 4 Wall. 475.
Georgia v. *Stanton*, 6 Wall. 50.
Gaines v. *Thompson*, 7 Wall. 347.
Litchfield v. *The Register and Receiver*, 9 Wall. 575.
United States ex rel. Dunlap v. *Black*, 128 U. S. 40.
Riverside Oil Co. v. *Hitchcock*, 190 U. S. 316.
Noble v. *Union &c. R. R.*, 147 U. S. 165.

II.

The petition does not set forth any ground for relief.

The action of which the petition complains is clearly in accord with the existing law. In support of this contention we present the opinion of the Attorney General written to the Secretary of the Treasury on February 20, 1914, in the following language:

PREFERENTIAL ON CUBAN SUGARS.

DEPARTMENT OF JUSTICE,

February 20, 1914.

SIR: In your letter of the 16th instant you state that your department has tentatively approved instructions to customs officers to admit Cuban sugars into this country on and after March 1 next at a reduction of 20 per cent of the rates of duty effective on that day. You ask whether these instructions are correct.

Paragraph 177 of the tariff act of October 3, 1913, fixes certain duties on sugars to be effective on and after March 1, 1914, until which date rates of duty prescribed by the corresponding paragraph of the act of August 5, 1909, shall remain in force; after May 1, 1916, sugars are to be admitted free. (38 Stat. 131.) The rates effective March 1 are a reduction of approximately 25 per cent of the rates under the Payne-Aldrich Act of 1909 and the Dingley Act of July 24, 1897.

By the commercial reciprocity treaty of 1902 between Cuba and the United States, and by the act of December 17, 1903, in execution thereof, articles of merchandise of Cuban growth or manufacture, including sugars, may be imported from Cuba into the United States at a reduction of 20 per cent of the regular rates. (33 Stat. 2136.) Your specific question is whether this preferential to Cuban sugars continues.

The treaty in question provided that it should not take effect until approved by Congress. This approval took the form of the act of December 17, 1903, under the provisions of which the treaty and the act became effective December 27, 1903. (*United States* v. *American Sugar Refining Company*, 202 U. S. 563.)

The pertinent articles of the treaty are II, VIII, and XI.

Article II reads:

"During the term of this convention, all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba im-

ported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the Tariff Act of the United States approved July 24, 1897, *or as may be provided by any tariff law of the United States subsequently enacted.*"

Article VIII declares that the rates of duty granted by each country to the other are and shall continue during the term of the treaty preferential in respect to all like imports from other countries, and concludes with the following proviso:

"*Provided,* That while this convention is in force, no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897."

Article XI provides that the convention shall continue five years from the date it takes effect and from year to year thereafter until one year after notice of an intention to terminate it.

The act of December 17, 1903, after directing that it should become effective upon certain action of the President, continues—

"so long as the said convention shall remain in force, all articles of merchandise being the

product of the soil or industry of the Republic of Cuba, which are now imported into the United States free of duty, shall continue to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, *or as may be provided by any tariff law of the United States subsequently enacted.* The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said convention preferential in respect to all like imports from other countries: * * *"

Then follows a proviso identical in terms with that of Article VIII of the treaty above quoted.

1. Both the treaty and the act of Congress look to future changes in rates of duty, and it is their clear intention that the preferential of 20 per cent shall apply not only to the rates of duty then existing under the Dingley Act but to the rates prescribed by any subsequent legislation. The preferential applies to sugar as well as to other articles. Unless, therefore, some specific provision of the treaty or of the new act prevents, the preferential still continues.

2. The foregoing proviso of Article VIII of the treaty and of the law of 1903 is the only

law relied upon as preventing the existence of the preferential after March 1.

This proviso is that no sugar imported from Cuba "shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by" the Dingley Act.

The reduction in these duties effective March 1 is 25 per cent, or more than the amount of the preferential, and it is therefore argued that the preferential ceases.

I doubt whether the proviso, if it were still in force, has the meaning claimed. But the short answer to the contention is that the proviso has been repealed. It was argued in Congress, after the decision to reduce the tariff on sugar by 25 per cent, that this proviso would prevent the continuance of the preferential on sugar, and to meet the argument there was inserted in the tariff act the exception which concludes Section B IV. That section is as follows:

"B. That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the eleventh day of December, nineteen hundred and two, or the provisions of the Act of Congress heretofore passed for the execution of the same except as to the proviso of article eight of said treaty, which proviso is hereby abrogated and repealed."

Clearly it was the intention of Congress as long as any tariff remained on sugar to con-

tinue the preferential to Cuban sugar. This was the spirit of the treaty and act of 1903, and the purpose of Section B IV is to carry out that spirit.

The language used is sufficient, I think, to accomplish the intent. It is argued that the proviso of the treaty can not be changed without the consent of Cuba. The answer is, that so far as the internal administration of our law is concerned, the later statute supersedes any inconsistent part of the treaty. (*Fong Yue Ting* v. *United States*, 149 U. S. 720.)

Again, it is said that only the proviso of the treaty is repealed, but that the same proviso as it appears in the act of 1903 remains in force. I think this contention is too technical to prevail. Section B IV continues in force both the treaty and the act, except as to the proviso; that, wherever it occurs, is superseded. This view is supported also by paragraph 8, section IV, which repeals all inconsistent acts and parts of acts. The proviso of the act of 1903 is inconsistent with the present law, and is therefore repealed.

In my judgment your construction of the law is correct. The 20 per cent preferential on Cuban sugar continues on and after March 1.

Respectfully,

J. C. McREYNOLDS.

To the SECRETARY OF THE TREASURY.

CONCLUSION.

We submit that leave to file the petition should be refused.

JOHN W. DAVIS,
Solicitor General.
JESSE C. ADKINS,
Assistant Attorney General.

APRIL, 1914.

○